

May 16, 2019

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**VIA E-MAIL (through the claims administrator)**  
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Hon. Anita B. Brody  
U.S. District Court  
Eastern District of Pennsylvania  
601 Market St., Rm 7613  
Philadelphia, PA 19106

RE: *In re NFL Players Concussion Injury Litigation*,  
No. 12-MD-2323-AB;

Re: Claimant A. G., Concussion Settlement ID No. 260006736

Dear Judge Brody:

I write on behalf of Mr. A.G., whose claim is the subject of an appeal to this Court.

We represent Claimant A. G., who belongs to Subclass 2<sup>1</sup>. We submitted his pre-effective date claim to the Claims Administrator for a monetary award based on a qualifying diagnosis of 1.5. The Claims Administrator granted the award. The award was then audited and subsequently, the grant of the award was confirmed. The NFL then appealed the determination of the Claims Administrator, contending primarily that despite the Board Certified neurologist's determination of a 1.5 qualifying diagnosis, the neuropsychologist testing was not consistent with this award. The Claimant's neuropsychologist, Dr. Hopper, found that Mr. Gordon's findings were consistent with 1.5 qualifying diagnosis. The NFL disputes those findings. Claimant Mr. Gordon respectfully submits that the award was proper and should not be disturbed, and relies upon the Claimant's opposition to the Appeal previously submitted.

Most significantly, under the terms of the Amended Settlement Agreement, the evidence required to submit a Subclass 2 member's claim is proof that a qualifying Board certified neurologist made a diagnosis and determination that the player qualified; which is exactly what

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<sup>1</sup> 1.2 (b) "Subclass 2" means Retired NFL Football Players who were diagnosed with a Qualifying Diagnosis prior to the date of the Preliminary Approval and Class Certification Order and their Representative Claimants and Derivative Claimants . . .

occurred in this case. Dr. Michael Lobatz, M.D., a highly regarded board certified neurology specialist in Encinitas, CA, who has been practicing for 38 years, is a specialist in traumatic brain injuries and has been Mr. G's physician for several years. Dr. Lobatz graduated from University Of Illinois College Of Medicine Chicago in 1977 and specializes in brain neurology. He identified and described Mr. G's brain bleed and evidence of his concussions that he observed on examination, through film images and through examinations over the last few years. Based on his examination and report, as well as a neuropsychological examination and report made prior to the effective date of the Settlement, Mr. G's claim was made early after the first claims were permitted. Dr. Lobatz has been interviewed by the Claims Administrator. The claims have been audited and reviewed and approved.

On March 12, 2018, we received a request from the Claims Administrator that the Special Master reviewing the NFL's Appeal of the grant of monetary award to Mr. G wanted to see the records from Dr. Delis.

Dean C. Delis, Ph.D., is a neuropsychologist retained by the NFL to evaluate Mr. G. for his separate claim of total and permanent disability (where it should be duly noted that he conveniently denied Mr. G's T&P Claim). As a player, Mr. G. was not able to, nor was entitled to obtain the records of the testing performed by NFL appointed physicians in connection with his application for total and permanent disability.

Mr. G. was awarded total and permanent disability based upon the Social Security Administration having determined that he was fully disabled based upon both his orthopedic injuries and the neurological injuries to his brain. As stated above, Mr. G.'s claim is submitted pursuant to the Amended Settlement Agreement before the Court. This set of reports by extremely biased reviewers that were (employed by the NFL), should not be utilized in this Appeal. Or, in the alternative, these reports should be viewed critically since they were produced by the NFL's paid experts.

Mr. G.'s claim determination here was based on the opinion of a Board Certified neurologist, who has significant expertise in the diagnosis, treatment and impact of traumatic brain injuries on patients. The Settlement Agreement under Section 6.3(c), only requires an examination and a report by a Board Certified neurologist. There is no requirement for the submission of any neuropsychological testing data.

The Amended Settlement Agreement was entered into by NFL and Class Counsel to resolve these open claims for brain damage. The Court reviewed it and determined that it was fair and appropriate for the class members, like Mr. G. The Agreement calls for payments to injured, retired NFL players who have suffered significant brain damage.

We have submitted five years' worth of medical records and employment records and, the neurologist who has offered his opinion about Mr. Gordon, was interviewed as to his findings by the Claims Administrator as a part of one of the audits performed on this claim.

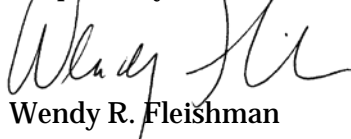
The Special Master initially affirmed the claim and denied the NFL's appeal. The NFL then again, claimed that the Special Master must review the case with an AAP member and after doing so, for the very first time, Mr. G's claim was improvidently denied.

Mr. G's pre-effective date claim was supported by a report and interview with a world renowned brain trauma expert who has examined Mr. G multiple times and who was previously audited by an AAP member and the claims administrator in connection with this exact claim. The Special Master's denial of the claim as a matter of law was improper because he failed to fairly apply the terms of the Amended Settlement Agreement as it applies to pre-effective date claims.

The Appeal has now been before the Court for several months and Mr. G. and his wife respectfully request the Court to review this matter.

We greatly appreciate the Court's attention to this very serious matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Wendy R. Fleishman', written in black ink.

Wendy R. Fleishman

cc: Brad Karp  
Bruce Birenboim  
Chris Seeger

WRF/wp

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